

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 536 (L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered: 4/21/92  
Referred: Finance**

**Sponsor(s): REPRESENTATIVE B.DAVIS**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to certain business development corporations; and providing for an  
2 effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 10 is amended by adding a new chapter to read:

5 **CHAPTER 13. BIDCOS.**

6 **ARTICLE 1. PURPOSES AND LICENSING.**

7 **Sec. 10.13.010. PURPOSES.** The purposes of this chapter are to

8 (1) promote economic development by encouraging the formation of BIDCOS to  
9 help meet the financing assistance and management assistance needs of businesses in the state;

10 (2) establish a system of licensing, regulation, and enforcement to enable a  
11 BIDCO to satisfy the eligibility requirements for participating in programs that further the  
12 purposes of the BIDCO;

13 (3) encourage capital sources to invest in and lend money to BIDCOS by  
14 providing for BIDCOS a system of licensing, regulation, and enforcement designed to prevent

1 fraud, conflict of interest, and mismanagement, and to promote competent management, accurate  
2 record keeping, and appropriate communication with shareholders;

3 (4) safeguard the general reputation of BIDCOS in order to increase the  
4 confidence of prospective equity investors in and prospective debt sources for BIDCOS.

5 Sec. 10.13.020. QUALIFICATIONS FOR BIDCO LICENSE. The department shall issue  
6 a license to operate as a BIDCO to a corporation that is incorporated under AS 10.06, or that has  
7 been issued a certificate of authority under AS 10.06 to transact business in the state, and that  
8 submits an application to the department, if the department determines that

9 (1) the applicant has the net worth required under AS 10.13.040;

10 (2) the directors, officers, and controlling persons of the applicant satisfy the  
11 criteria under AS 10.13.050;

12 (3) it is reasonable to believe that the corporation will comply with this chapter;

13 (4) the applicant has a reasonable promise of being a viable, ongoing BIDCO  
14 satisfying the basic objectives of the corporation's business plans, and achieving long-term  
15 financial success.

16 Sec. 10.13.030. APPLICATION PROCEDURE. When applying for a license, an  
17 applicant shall provide the information in the form required by the department. The information  
18 must include information on the directors, officers, and controlling persons of the applicant, the  
19 applicant's business plan, including at least 10 years of detailed financial projections and other  
20 relevant information, and additional information considered relevant by the department.

21 Sec. 10.13.040. REQUISITE NET WORTH. (a) In order to receive a license, an  
22 applicant must demonstrate to the satisfaction of the department that the applicant has raised  
23 sufficient capital so that

24 (1) the net worth of the BIDCO is expected to be adequate, in the context of its  
25 business plan, to support the BIDCO's management team and to achieve an appropriate spreading  
26 of the risk involved in the BIDCO's providing of financing assistance; and

27 (2) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO,  
28 satisfying the basic objectives of its business plan and achieving long-term financial success.

29 (b) Unless the BIDCO receives a loan under AS 37.17.200 - 37.17.390, the department  
30 may not establish a minimum net worth for a BIDCO under this section of less than \$1,500,000.  
31 If the BIDCO, as part of its initial capitalization, receives a loan under AS 37.17.200 - 37.17.390,

1 the minimum net worth of the BIDCO may be \$500,000, excluding organization costs paid for  
2 or owed by the BIDCO.

3 Sec. 10.13.050. CRITERIA FOR DIRECTORS, OFFICERS, AND CONTROLLING  
4 PERSONS. (a) A license may only be issued if the department determines that each director,  
5 officer, and controlling person of the applicant is

6 (1) of good character and sound financial standing;

7 (2) competent to perform the director's or officer's functions for the applicant;

8 and

9 (3) when considered collectively with the other directors, officers, and controlling  
10 persons, adequate to manage the business of the applicant as a BIDCO.

11 (b) The department may determine that a director, officer, or controlling person of an  
12 applicant is not of good character. Bases the department may use to make that determination  
13 include proof that the director, officer, or controlling person, or a director or officer of a  
14 controlling person has

15 (1) had an administrative sanction imposed under 31 U.S.C. 3801 - 3812 (Program  
16 Fraud Civil Remedies Act of 1986) for an offense under 15 U.S.C. 645; or

17 (2) been convicted of a crime involving fraud or dishonesty, including a  
18 conviction for an offense under 15 U.S.C. 645; in this paragraph, "conviction" includes a  
19 conviction based on a guilty plea or plea of nolo contendere.

20 Sec. 10.13.060. DETERMINATION OF FUTURE NONCOMPLIANCE. The department  
21 may determine that it is not reasonable to believe that an applicant would comply with this  
22 chapter if licensed. Bases the department may use to make that determination include proof that  
23 the applicant has been convicted of a crime involving fraud or dishonesty, including a conviction  
24 based on a guilty plea or plea of nolo contendere.

25 Sec. 10.13.070. DENIAL OF APPLICATION. If the department denies a license the  
26 department shall provide the applicant with a written statement explaining the reasons for the  
27 denial.

28 Sec. 10.13.080. DISPLAY OF LICENSE. A licensee shall post the license in a  
29 conspicuous place in the licensee's principal office.

30 Sec. 10.13.090. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A  
31 licensee may not transfer or assign its license.

1           **Sec. 10.13.100. SURRENDER OF LICENSE.** (a) Upon approval by a two-thirds vote  
2 of its board of directors and after complying with (b) and (c) of this section, a licensee may apply  
3 to the department to have the department accept the surrender of the licensee's license. If the  
4 department determines that the requirements of this section have been satisfied, the department  
5 shall approve the application unless the department determines that the purpose of the application  
6 is to evade a current or prospective action by the department under AS 10.13.700 - 10.13.830.

7           (b) Not less than 60 days before filing an application under (a) of this section, a licensee  
8 shall notify all of its shareholders and creditors of its intention to file the application. Each  
9 creditor shall be notified of the right to comment to the department. Each shareholder shall be  
10 notified of the right to file with the licensee an objection to the proposed surrender of the license  
11 within the 60-day period and shall be advised that, if the shareholder files an objection, the  
12 shareholder may also send a copy of the objection to the department.

13           (c) If shareholders representing 20 percent of the outstanding voting securities of the  
14 licensee file an objection with the licensee, the licensee may not proceed with the application  
15 unless the application is approved by a vote of shareholders representing two-thirds of the  
16 outstanding voting securities of the licensee.

17                           **ARTICLE 2. CORPORATE MATTERS.**

18           **Sec. 10.13.120. CORPORATE NAME.** (a) The corporate name of a licensee must  
19 include the word "BIDCO." A licensee may not transact business under a name other than its  
20 corporate name.

21           (b) Before being issued a license, a corporation that proposes to apply for a license or  
22 that applies for a license may perform, under a name that indicates that the corporation is a  
23 corporation licensed under this chapter, the acts necessary to apply for and obtain a license and  
24 otherwise prepare to begin business as a licensee. The corporation may not represent that it is  
25 a licensee until after the license has been obtained.

26           **Sec. 10.13.130. BOARD OF DIRECTORS.** (a) The board of directors of a licensee  
27 must have at least seven directors.

28           (b) The board of directors shall hold at least one meeting each calendar quarter.

29           **Sec. 10.13.140. NOTICE OF OFFICER AND DIRECTOR CHANGES.** Within 30 days  
30 of each of the following events, the licensee shall notify the department in writing of the event  
31 and provide any additional information that the department requires:

- 1 (1) the death, resignation, or removal of a director or officer;  
2 (2) the election of a director; or  
3 (3) the appointment of an officer.

4 Sec. 10.13.150. DIVIDENDS. (a) A licensee may not pay or obligate itself to pay a  
5 cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent  
6 with a dividend policy that has been adopted by the licensee and approved by the department.

7 (b) When approving dividend policies under this section, the department shall consider  
8 the special characteristics of BIDCOS and the diverse range of dividend policies that are  
9 potentially appropriate for a BIDCO and that would protect the licensee against unsafe or  
10 unsound acts that could threaten the viability of the licensee as an ongoing BIDCO by eroding  
11 its capital base.

12 (c) The department may at any time withdraw a previous approval of a dividend policy  
13 if the department determines that the withdrawal is necessary to prevent unsafe or unsound acts.

14 Sec. 10.13.160. STOCK BUY-BACK. A licensee may not buy back or obligate itself  
15 to buy back a share of equity interest from a shareholder without the prior approval of the  
16 department.

17 ARTICLE 3. TRANSACTION OF BUSINESS.

18 Sec. 10.13.170. OFFICES. (a) A licensee shall maintain at least one office in this state.

19 (b) A licensee may not maintain an office outside this state.

20 (c) The location of each office of a licensee shall be reasonably accessible to the public.

21 (d) A licensee shall post in a conspicuous place at each of the licensee's offices a sign  
22 that bears the corporate name of the licensee.

23 (e) If a licensee establishes, relocates, or closes an office, the licensee shall give the  
24 department written notice within 30 days of the event.

25 Sec. 10.13.180. BUSINESS OF LICENSEE. A licensee may not engage in a business  
26 other than providing financing assistance and management assistance to businesses.

27 Sec. 10.13.190. GENERAL POWERS. In addition to the other powers given by this  
28 chapter and the powers conferred on the licensee by the laws under which it is incorporated that  
29 are not inconsistent with this chapter, a licensee may

- 30 (1) borrow money and otherwise incur indebtedness for the licensee's purposes,  
31 including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness;

1 a licensee's indebtedness may be secured or unsecured, and may involve equity features,  
2 including provisions for conversion to stock and warrants to purchase stock;

3 (2) make contracts;

4 (3) incur and pay necessary and incidental operating expenses;

5 (4) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or  
6 otherwise acquire or dispose of real or personal property, and the rights and privileges that are  
7 incidental and appurtenant to the transactions, if the real or personal property is for the licensee's  
8 use in operating the licensee's business or if the real or personal property is acquired by the  
9 licensee from time to time in satisfaction of debts or the enforcement of obligations;

10 (5) make donations for charitable, educational, research, or similar purposes;

11 (6) provide financing assistance and management assistance to businesses and  
12 establish the terms and conditions of the assistance;

13 (7) implement a reasonable and prudent policy for conserving and investing the  
14 licensee's money before the money is used to provide financing assistance to business or to pay  
15 the expenses of the licensee;

16 (8) exercise the incidental powers that are necessary, convenient, or reasonably  
17 related to providing financing assistance and management assistance to businesses.

18 Sec. 10.13.200. FINANCING ASSISTANCE FORM, TERMS, AND CONDITIONS. A  
19 licensee may determine the form, terms, and conditions for the financing assistance that it will  
20 provide.

21 Sec. 10.13.210. FINANCING ASSISTANCE ALLOWED. The financing assistance that  
22 a licensee may provide includes

23 (1) loans;

24 (2) purchase of debt instruments;

25 (3) straight equity investments including the purchase of common stock or  
26 preferred stock;

27 (4) debt with equity features including warrants to purchase stock, convertible  
28 debentures, or receipt of a percent of net income or sales;

29 (5) royalty-based financing;

30 (6) debt guarantees;

31 (7) property leasing.

1           Sec. 10.13.220. PARTICIPATION IN GOVERNMENTAL PROGRAMS. (a) A licensee  
2 may participate in a federal, state, or local government program for which the licensee is eligible  
3 and that has as the program's function the provision or facilitation of financing assistance or  
4 management assistance to businesses.

5           (b) If a licensee participates in a program referred to in (a) of this section, the licensee  
6 shall comply with the requirements of the program.

7           Sec. 10.13.230. SCOPE OF MANAGEMENT ASSISTANCE. When providing  
8 management assistance, a licensee may provide management advice, management services,  
9 technical advice, and technical services.

10          Sec. 10.13.240. LIMITATION TO PURPOSES OF BUSINESS. Financing assistance  
11 and management assistance provided by a licensee to a business may only be for the business  
12 purposes of the business.

13          Sec. 10.13.250. CONTROL OF OTHER BUSINESSES. A licensee may not hold control  
14 of another business, except as provided under AS 10.13.260 - 10.13.280. In this section,  
15 "licensee" includes the licensee in concert with a director, officer, controlling person, or affiliate  
16 of the licensee.

17          Sec. 10.13.260. CONTROL OF ASSISTED BUSINESS. (a) A licensee that has  
18 provided financing assistance to a business may acquire and hold control of the business to the  
19 extent it becomes necessary to protect the licensee's interest as a creditor of, or investor in, the  
20 business.

21          (b) Unless the department approves a longer period, a licensee holding control of a  
22 business under this section shall divest itself of the control as soon as practicable, or within five  
23 years after acquiring the interest, whichever is sooner.

24          (c) Within 30 days after a licensee exercises its authority to acquire and hold control of  
25 a business under this section, the licensee shall notify the department of the action. The  
26 notification must include the reasons why it is necessary for the licensee to acquire and hold  
27 control of the business and the length of time the licensee anticipates that it may be necessary  
28 to hold control of the business.

29          Sec. 10.13.270. CONTROL OF BUSINESS PROVIDING FINANCING ASSISTANCE  
30 AND MANAGEMENT ASSISTANCE. With the approval of the department, a licensee may  
31 acquire and hold control of another business that is engaged only in the business of providing



1 financing assistance and management assistance to businesses.

2 Sec. 10.13.280. CONTROL OF OTHER BUSINESSES. (a) With the approval of the  
3 department, a licensee may acquire and hold control of a business not otherwise allowed under  
4 AS 10.13.250 - 10.13.270.

5 (b) The department may not approve an application under (a) of this section unless the  
6 department determines that

7 (1) the acquisition and control will not cause the amount of the licensee's  
8 investments in businesses covered by this section to exceed 15 percent of the assets of the  
9 licensee; and

10 (2) in the department's judgment the approval will promote the purposes of this  
11 chapter.

12 (c) An approval under (a) of this section may not be for a period of more than three  
13 years, unless the department determines that a longer period is necessary and consistent with the  
14 purposes of this chapter.

15 Sec. 10.13.285. "HOLD CONTROL" DEFINED. In AS 10.13.250 - 10.13.280, "hold  
16 control" means to directly or indirectly own, of record or beneficially, 50 percent or more of a  
17 business's outstanding voting equity interests.

18 Sec. 10.13.290. BUSINESS PRACTICE STANDARD. (a) A licensee shall transact its  
19 business in a safe and sound manner and shall maintain itself in a safe and sound condition.

20 (b) In determining whether a licensee is transacting business in a safe and sound manner,  
21 the department may not consider the risk of providing financing assistance to a business, unless  
22 the department determines that the risk is great enough to demonstrate gross mismanagement  
23 when compared with the return that can be realistically expected.

24 (c) Notwithstanding the other provisions of this section, the department may

25 (1) if the amount of the financing assistance is unduly large in relation to the total  
26 assets or the total shareholder equity of the licensee, determine that a licensee's financing  
27 assistance to a single business or group of affiliated businesses violates (a) of this section or  
28 constitutes an unsafe or unsound act;

29 (2) require that a licensee maintain a reserve in the amount of anticipated losses;

30 (3) require that a licensee have in effect a written financing assistance policy  
31 approved by the licensee's board of directors, including credit evaluation and other matters; the

1 department may not require that a licensee adopt a financing assistance policy that contains  
2 standards that prevent the licensee from exercising needed flexibility in evaluating and structuring  
3 financing assistance to businesses on an individual basis.

4 Sec. 10.13.300. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST. A person  
5 shall disclose a potential conflict of interest that occurs in a transaction in the financing  
6 documents of the transaction or, if the transaction does not involve financing assistance, in  
7 another appropriate document, if the person

8 (1) participates in a decision of a licensee relating to the transaction; and

9 (2) knows of a potential conflict of interest involving the transaction.

10 Sec. 10.13.310. POTENTIAL CONFLICTS OF INTEREST DEFINED. (a) In  
11 AS 10.13.300, licensee transactions that involve a potential conflict of interest include

12 (1) providing financing assistance to a principal shareholder of the licensee, to a  
13 person controlled by a principal shareholder of the licensee, or to a director, officer, partner,  
14 relative, controlling person, or affiliate of a principal shareholder of the licensee;

15 (2) providing financing assistance to a business to which one or more of the  
16 following provides or plans to provide contemporaneous financing assistance:

17 (A) a principal shareholder of the licensee;

18 (B) a director, officer, partner, relative, controlling person, or affiliate of  
19 a principal shareholder of a licensee;

20 (C) an affiliate of a principal shareholder of a licensee; or

21 (D) a person controlled by a principal shareholder of the licensee;

22 (3) providing financing assistance to a business that has or is expected to have  
23 a substantial business relationship with another business that has a director, officer, or controlling  
24 person who is also

25 (A) a director, officer, or controlling person of the licensee; or

26 (B) the spouse of a director, officer, or controlling person of the licensee;

27 (4) providing financing assistance to a business if the business, or a director,  
28 officer, or controlling person of the business contemporaneously has lent or will lend money to  
29 an associate of the licensee;

30 (5) providing financing assistance for the purchase of property of an associate or  
31 principal shareholder of the licensee;

1 (6) selling or otherwise transferring an asset of the licensee to an associate or  
2 principal shareholder of the licensee.

3 (b) In this section, "relative" means a parent, child, sibling, spouse, grandparent,  
4 grandchild, nephew, niece, aunt, or uncle, or a relative of the same degree through marriage.

5 Sec. 10.13.320. AUTHORITY OF DEPARTMENT. AS 10.13.310 does not limit the  
6 authority of the department to determine that an act involves a conflict of interest and is therefore  
7 an unsafe or unsound act.

8 ARTICLE 4. MERGERS AND ACQUISITIONS.

9 Sec. 10.13.400. ACQUIRING CONTROL OF A LICENSEE. Except as otherwise  
10 provided under AS 10.13.250 - 10.13.280, a person may not acquire control of a licensee without  
11 the prior approval of the department.

12 Sec. 10.13.410. APPLICATION TO ACQUIRE CONTROL. (a) The department shall  
13 approve an application to acquire control of a licensee under AS 10.13.400 if the department  
14 determines that

15 (1) the applicant and the directors and officers of the applicant are of good  
16 character and sound financial standing;

17 (2) it is reasonable to believe that the applicant will comply with this chapter; and

18 (3) the plans, if any, of the applicant to make a major change in the business,  
19 corporate structure, or management of the licensee are not detrimental to the safety and soundness  
20 of the licensee.

21 (b) If, after notice and a hearing, the department determines that the criteria for approval  
22 in (a) of this section have not been satisfied, the department shall deny the application.

23 Sec. 10.13.420. DETERMINATIONS. (a) When the department is reviewing an  
24 application under AS 10.13.410, the department may determine that an

25 (1) applicant or a director or officer of an applicant is not of good character if the  
26 person has been convicted of a crime involving fraud or dishonesty, including a conviction based  
27 on a guilty plea or plea of nolo contendere;

28 (2) applicant's plan to make a major change in the management of a licensee is  
29 detrimental to the safety and soundness of the licensee if the plan provides for a person to  
30 become a director or officer of the licensee and the person has been convicted of a crime  
31 involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo

1       contendere.

2               (b) The conditions described in (a) of this section are not the only conditions upon which  
3 the department may determine that an applicant or a director or an officer of an applicant is not  
4 of good character or that an applicant's plan to make a major change in the management of a  
5 licensee is detrimental to the safety and soundness of the licensee.

6               Sec. 10.13.430. MERGER. A licensee may not merge with another corporation unless  
7 the merger is approved by the department, and, if the licensee is not the surviving corporation,  
8 the surviving corporation is a licensee.

9               Sec. 10.13.440. PURCHASE. A licensee may not purchase all or substantially all of the  
10 business of another person unless the purchase is approved by the department.

11              Sec. 10.13.450. SALE. A licensee may not sell all or substantially all of the licensee's  
12 business or of the business of an office of the licensee to another person unless the purchaser is  
13 a licensee and the sale is approved by the department.

14              Sec. 10.13.460. DEPARTMENT APPROVAL. The department may not approve a  
15 merger, purchase, or sale under AS 10.13.430 - 10.13.450 unless the department determines that

16                   (1) the merger, purchase, or sale will be safe and sound with respect to the  
17 acquiring licensee;

18                   (2) upon consummation of the merger, purchase, or sale, it is reasonable to  
19 believe that the acquiring licensee will comply with this chapter;

20                   (3) the merger, purchase, or sale will not have a major detrimental effect on  
21 competition in the providing of financial assistance or management assistance to businesses, or,  
22 if there will be a detrimental effect, the merger, purchase, or sale is necessary in the interests of  
23 the safety and soundness of a party to the merger, purchase, or sale, or is otherwise, on balance,  
24 in the public interest.

25              ARTICLE 5. REGULATION, REPORTING, AND EXAMINATION.

26              Sec. 10.13.470. ADMINISTRATION. The department shall administer this chapter. The  
27 department may issue orders and may adopt regulations that, in the opinion of the department,  
28 are necessary to execute, enforce, and achieve the purposes of this chapter. Adoption of  
29 regulations under this chapter is subject to the AS 44.62 (Administrative Procedure Act).

30              Sec. 10.13.480. CONDITIONS OF ORDER OR LICENSE. When the department issues  
31 an order or license under this chapter, the department may impose conditions that the department

1 determines are necessary to carry out the purposes of this chapter.

2           **Sec. 10.13.490. DECLARATORY RULINGS.** The department may provide to an  
3 interested person a declaratory ruling on a provision of this chapter.

4           **Sec. 10.13.500. JUDICIAL REVIEW.** A final order, decision, license, or other official  
5 act of the department under this chapter is subject to judicial review by the superior court under  
6 the applicable rules of court.

7           **Sec. 10.13.510. INVESTIGATIONS.** The department may make public or private  
8 investigations inside or outside the state that the department considers necessary to determine  
9 whether to approve an application for a license, to determine whether a person has violated or  
10 is about to violate this chapter, to aid in the enforcement of this chapter, or to aid in issuing an  
11 order or adopting a regulation under this chapter.

12           **Sec. 10.13.520. INVESTIGATIVE POWERS.** For the purposes of an investigation,  
13 examination, or other proceeding under this chapter, the department may administer oaths and  
14 affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require  
15 the production of books, papers, correspondence, memoranda, agreements, and other documents  
16 or records that the department considers relevant or material to the proceeding.

17           **Sec. 10.13.530. FAILURE TO COMPLY.** If a person fails to comply with a subpoena  
18 issued by the department under this chapter or to testify with respect to a matter covered by this  
19 chapter, the superior court may issue an order requiring the attendance of the person and the  
20 giving of testimony or production of evidence.

21           **Sec. 10.13.540. SERVICE OF PROCESS.** If the department is authorized to make  
22 service of process in connection with a noncriminal administrative proceeding under this chapter,  
23 the department may make the service by registered or certified mail.

24           **Sec. 10.13.550. FEES.** A person shall pay the department

25                   (1) \$2,500 for filing an application for a license;

26                   (2) \$1,250 for filing an application for approval to acquire control of a licensee;

27                   (3) \$1,250 for filing an application for approval for a merger, purchase, or sale  
28 under AS 10.13.430 - 10.13.460; if two or more applications relating to the same merger,  
29 purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing  
30 \$1,250 by the number of the applications;

31                   (4) \$2,500 each calendar year at the time established by the department, if the

1 person is a licensee;

2 (5) a fee established by the department for the examination of a licensee or a  
3 subsidiary of a licensee; the department shall base the fee on the number of examiner hours used  
4 for the examination and the travel expenses involved; the department shall bill examiner time at  
5 a rate between \$25 and \$40 an hour; the fee shall be paid within 10 days after receiving a  
6 statement from the department.

7 Sec. 10.13.560. FEE PAYMENT AND REFUNDS. A fee for filing an application with  
8 the department shall be paid at the time the application is filed with the department and is not  
9 refundable.

10 Sec. 10.13.570. RECORD AND REPORT REQUIREMENTS. (a) A licensee shall make  
11 and keep books, accounts and other records in the form and manner, at the place, and for the  
12 period of time that the department establishes by regulation.

13 (b) A licensee, affiliate of a licensee, and a subsidiary of a licensee shall file with the  
14 department the reports that the department requires. A report must be in the form and contain  
15 the information that the department requires.

16 (c) The department may require by order that a licensee include an asset on the licensee's  
17 books and records at a valuation that represents the current value of the asset.

18 (d) Not later than 90 days after the close of the calendar year, or a longer period if  
19 established by the department, a licensee shall file with the department an audit report containing

20 (1) financial statements, including a balance sheet, statement of income or loss,  
21 statement of changes in capital accounts, and statement of changes in financial position for, or  
22 as of the end of, the calendar year, prepared with an audit by an independent certified public  
23 accountant in accordance with generally accepted accounting principles;

24 (2) a report, certificate, or opinion of the independent certified public accountant  
25 who performs the audit, stating that the financial statements were prepared in accordance with  
26 generally accepted accounting principles; and

27 (3) other information that the department may require.

28 Sec. 10.13.580. RECORDS AND REPORTS KEPT BY OTHERS. (a) If a person other  
29 than a licensee makes or keeps all or part of the books, accounts, or other records of the licensee,  
30 this chapter applies to the person with respect to the books, accounts, and other records to the  
31 same extent as if the person were the licensee.

1 (b) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or  
2 part of the books, accounts, or other records of the affiliate or subsidiary, this chapter applies to  
3 the person with respect to the books, accounts, and other records to the same extent as if the  
4 person were the affiliate or subsidiary.

5 (c) If the department considers it expedient, the department may require a licensee to  
6 obtain the approval of the department before permitting another person to make or keep all or  
7 part of the books, accounts, or other records of the licensee.

8 Sec. 10.13.590. INFORMATION ON ECONOMIC DEVELOPMENT EFFECT. Each  
9 year the department shall publish and provide to the legislature information on the effect of this  
10 chapter on promoting economic development in the state. The information must include  
11 aggregate statistics on

12 (1) the number and dollar amount of the financing assistance made by licensees  
13 to businesses;

14 (2) the number and dollar amount of the financing assistance made by licensees  
15 to businesses; the amounts shall be organized into broad categories based on the types of industry  
16 involved; the standard industrial classification manual may be used for the categories;

17 (3) the number and dollar amount of the financing assistance made by licensees  
18 to minority-owned businesses and to businesses owned by women; and

19 (4) estimates of the number of jobs created or retained.

20 Sec. 10.13.600. EXAMINATION OF LICENSEES AND SUBSIDIARIES. (a) The  
21 department may at any time examine a licensee or a subsidiary of a licensee. Licensure under  
22 this chapter constitutes implied consent to examination by the department.

23 (b) The department shall examine a licensee at least once during each calendar year.

24 (c) At the department's request the following persons shall provide to the department the  
25 books, accounts, and records of a licensee or a licensee's subsidiary and shall otherwise facilitate  
26 the department's examination of the licensee to the fullest extent possible:

27 (1) a director, officer, or employee of a licensee being examined by the  
28 department;

29 (2) a director, officer, or employee of a subsidiary of a licensee being examined  
30 by the department;

31 (3) a person having custody of the books, accounts, or records of a licensee being

1 examined by the department;

2 (4) a person having custody of the books, accounts, or records of a subsidiary of  
3 a licensee being examined by the department.

4 (d) The department may retain a certified public accountant, attorney, appraiser, or other  
5 person to assist the department in the examination of a licensee or a subsidiary of a licensee if  
6 the department determines that the assistance is necessary. Within 10 days after receipt of a  
7 statement from the department, the licensee being examined shall pay the fees of a person  
8 retained by the department under this subsection.

9 ARTICLE 6. PROHIBITED ACTIVITIES.

10 Sec. 10.13.610. MISREPRESENTATION. (a) Except as otherwise provided in  
11 AS 10.13.120, a person transacting business in the state who is not a licensee may not knowingly  
12 use a name or title that indicates that the person is a BIDCO or otherwise represent that the  
13 person is a BIDCO or a licensee.

14 (b) A licensee may not knowingly misrepresent the meaning or effect of its license.

15 Sec. 10.13.620. INSPECTION OR COPYING REFUSAL. A person having custody of  
16 all or part of the books, accounts, or other records of a licensee may not knowingly refuse to  
17 allow the department, upon request, to inspect or make copies of the records.

18 Sec. 10.13.630. FINANCING ASSISTANCE TO ASSOCIATES OF LICENSEE. A  
19 licensee may not directly or indirectly provide financing assistance to an associate of the licensee.

20 Sec. 10.13.640. FINANCING ASSISTANCE TO DISCHARGE OBLIGATION TO  
21 ASSOCIATE OF LICENSEE. A licensee may not directly or indirectly provide financing  
22 assistance to discharge, or to free money for use in discharging, part or all of an obligation to  
23 an associate of the licensee. This section does not apply to a transaction of an associate of a  
24 licensee in the normal course of the associate's business involving a line of credit or financing  
25 assistance with a term of not more than five years.

26 Sec. 10.13.650. CONTEMPORANEOUS FINANCING ASSISTANCE. (a) If the terms  
27 on which a licensee provides financing assistance to a business are less favorable to the licensee  
28 than the terms on which an associate of the licensee provides financing assistance to the business,  
29 the licensee may not directly or indirectly provide the assistance to the business within one year  
30 before or after the associate provides assistance.

31 (b) If the financing assistance provided by the licensee's associate is of a different kind

1 from the financing assistance provided by the licensee, the burden is on the licensee to prove that  
2 the terms on which the licensee provided the financing assistance were at least as favorable to  
3 the licensee as the terms on which the associate provided the assistance.

4 (c) This section does not apply

5 (1) if the associate is a controlling person of the licensee and is also the only  
6 shareholder of the licensee;

7 (2) if the associate is a subsidiary of the licensee;

8 (3) to a transaction of an associate of a licensee in the normal course of the  
9 associate's business involving either a line of credit or financing assistance with a term of not  
10 more than five years.

11 Sec. 10.13.660. COMPENSATION OF ASSOCIATE. (a) An associate of a licensee  
12 may not directly or indirectly receive from a person to whom the licensee provides financing  
13 assistance

14 (1) compensation in connection with the providing of the financing assistance; or

15 (2) other things of value for procuring, influencing, or attempting to procure or  
16 influence the licensee's action with respect to providing the financing assistance.

17 (b) This section does not apply to the receipt of fees by an associate of a licensee for  
18 bona fide services performed by the associate if

19 (1) the associate, with the consent and knowledge of the person to whom the  
20 financing assistance is provided, is designated by the licensee to perform the services;

21 (2) the services are appropriate and necessary under the circumstances;

22 (3) the fees for the services are approved as reasonable by the licensee; and

23 (4) the fees for the services are collected by the licensee, and the licensee pays  
24 the associate.

25 Sec. 10.13.670. EXEMPTIONS. (a) If the department finds that the exemption is in the  
26 public interest and that the regulation of the person, transaction, or class is not necessary for the  
27 purposes of this chapter, the department may exempt a person or transaction or class of persons  
28 or transactions from AS 10.13.630 - 10.13.660.

29 (b) The department may make an exemption under (a) of this section by order or  
30 regulation. The exemption may be unconditional or upon specified terms and conditions and for  
31 specified periods.



1 may order the licensee or subject person to cease and desist from the action or violation. The  
2 order may require the licensee or subject person to take affirmative action to correct a condition  
3 resulting from the action or violation.

4 Sec. 10.13.750. REMOVAL AND SUSPENSION ORDERS IN CASES OF VIOLATION  
5 OR BREACH OF DUTY. (a) The department may issue an order removing a subject person  
6 of a licensee from office with the licensee and prohibiting the subject person from further  
7 participating in any manner in the conduct of the business of the licensee if the department  
8 determines after notice and a hearing that

9 (1) the person has violated this chapter or another applicable law, has engaged  
10 in an unsafe or unsound act with respect to the business of the licensee, or has engaged in an act  
11 that constitutes a breach of the person's fiduciary duty;

12 (2) the act, violation, or breach of fiduciary duty has caused or is likely to cause  
13 substantial financial loss or other damage to the licensee, has seriously prejudiced or is likely to  
14 seriously prejudice the interest of the licensee, or the person has received financial gain by reason  
15 of the act, violation, or breach of fiduciary duty; and

16 (3) the act, violation, or breach of fiduciary duty involves dishonesty on the part  
17 of the person, demonstrates the person's gross negligence with respect to the business of the  
18 licensee, or demonstrates the person's wilful disregard for the safety and soundness of the  
19 licensee.

20 (b) The department may issue an order removing a subject person of the licensee from  
21 office with the licensee and prohibiting the subject person from further participating in any  
22 manner in the conduct of the business of the licensee, except with the prior consent of the  
23 department if, after notice and a hearing, the department determines that, by engaging or  
24 participating in an act with respect to a financial or other business institution that resulted in  
25 substantial financial loss or other damage, the subject person of a licensee demonstrated

26 (1) dishonesty or a wilful or continuing disregard for the safety and soundness  
27 of the financial or other business institution; and

28 (2) unfitness to continue as a subject person of the licensee or to participate in  
29 conducting the business of the licensee.

30 (c) The department may immediately issue an order suspending a subject person of a  
31 licensee from the person's office, if any, with the licensee and prohibiting the subject person

1 from further participating in any manner in the conduct of the business of the licensee except  
2 with the consent of the department, if the department determines that

3 (1) the factors in (a) or (b) of this section are true with respect to the person; and  
4 (2) an immediate order is necessary to protect the interests of the licensee or the  
5 public.

6 (d) In this section, "office" means, when used with respect to a licensee, the position of  
7 director, officer, or employee of the licensee or of a subsidiary of the licensee.

8 Sec. 10.13.760. REMOVAL AND SUSPENSION ORDERS IN CASES OF  
9 INDICTMENT OR CONVICTION. (a) If the department determines that a subject person of  
10 a licensee has been indicted by a grand jury or has been bound over for trial by a court for a  
11 crime involving dishonesty or breach of trust, and that the continuation of the person as a subject  
12 person of the licensee may threaten the interests of the licensee or may threaten to impair public  
13 confidence in the licensee, the department may issue an order suspending the person from the  
14 person's office, if any, with the licensee and prohibiting the person from further participating in  
15 any manner in the conduct of the business of the licensee until the person's charge has been  
16 disposed of.

17 (b) If the department determines that a subject person or former subject person of a  
18 licensee to whom an order was issued under (a) of this section, or another subject person of a  
19 licensee, has been convicted of a crime involving dishonesty or breach of trust, and that the  
20 continuation or resumption of the person as a subject person of the licensee may threaten the  
21 interests of the licensee, the department may issue an order suspending or removing the person  
22 from the person's office, if any, with the licensee and prohibiting the person from further  
23 participating in any manner in the conduct of the business of the licensee, except with the prior  
24 consent of the department.

25 (c) The failure to convict a subject person who is charged with a crime involving  
26 dishonesty or breach of trust does not prevent the department from issuing an order to the person  
27 under another provision of this chapter.

28 (d) In this section, "office" has the meaning given in AS 10.13.750.

29 Sec. 10.13.770. HEARINGS ON ORDERS. (a) Within 30 days after an order is issued  
30 under AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760, the licensee or subject person of a  
31 licensee to whom the order is directed may file with the department an application for a hearing

1 on the order.

2 (b) If the department fails to begin a hearing within 15 business days after the application  
3 is filed or within a longer period to which the licensee or subject person consents, the order shall  
4 be considered rescinded.

5 (c) After the hearing, the department shall affirm, modify, or rescind the order.

6 (d) A person to whom an order is issued under this section may apply to the department  
7 to modify or rescind the order. The department may not modify or rescind the order unless the  
8 department determines that it is in the public interest to do so and that it is reasonable to believe  
9 that the person will comply with this chapter.

10 (e) The right of a licensee or subject person to whom an order is issued under  
11 AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760 to an interlocutory review of the order is  
12 not affected by the failure of the licensee or subject person to apply to the department for a  
13 hearing on the order issued under this section.

14 Sec. 10.13.780. DISCLOSURE TO SHAREHOLDERS. If the department determines  
15 that the results of a department communication or order addressed to the licensee or to a subject  
16 person of the licensee should be disclosed to the licensee's shareholders, the department may  
17 require the licensee to make the disclosure in the form and manner determined by the department.

18 Sec. 10.13.790. MEETINGS OF DIRECTORS AND SHAREHOLDERS CALLED BY  
19 DEPARTMENT. (a) If the department considers it expedient, the department may call a  
20 meeting of the board of directors or of the shareholders of a licensee.

21 (b) The department shall send notification of the time, place, and purpose of the meeting  
22 not less than five days before the meeting to each director, if a directors' meeting, or to each  
23 shareholder, if a shareholders' meeting, either by personal service or by registered or certified  
24 mail sent to the person's last known address as shown in the records of the department.

25 (c) The licensee shall pay the notice and meeting expenses for a meeting of shareholders  
26 called under (a) of this section.

27 Sec. 10.13.800. ORDERS RESTRICTING ADDITIONAL FINANCING ASSISTANCE.

28 (a) The department may issue an order directing a licensee to refrain from providing additional  
29 financing assistance to businesses if, in the opinion of the department, the order is necessary to  
30 protect the interests of the licensee or the public, and if, after notice and a hearing, the  
31 department determines that

1 (1) the licensee or a controlling person, subsidiary, or affiliate of the licensee has  
2 violated this chapter or another applicable law;

3 (2) the licensee is conducting the licensee's business in an unsafe and unsound  
4 manner;

5 (3) the licensee is in a condition that makes it unsafe or unsound for the licensee  
6 to transact business;

7 (4) the licensee has ceased to transact business as a BIDCO;

8 (5) the licensee is insolvent;

9 (6) the licensee has suspended payment of the licensee's obligations, has made  
10 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's  
11 inability to pay the licensee's debts as the debts become due;

12 (7) the licensee has applied for an adjudication of bankruptcy, reorganization,  
13 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law,  
14 an involuntary petition in bankruptcy against the person has not been dismissed in 90 days, or  
15 a person has applied for the relief under the law against a licensee and the relief has been granted  
16 or the licensee has by an affirmative act approved of or consented to the action; or

17 (8) a fact or condition exists that would have been grounds for denying the  
18 licensee a license if the fact or condition had existed when the licensee applied for the license.

19 (b) If the department determines that a factor in (a) of this section is true with respect  
20 to a licensee and that it is necessary for the protection of the interests of the licensee or the  
21 public that the department immediately prevent the licensee from providing additional financing  
22 assistance to businesses, the department may issue the order without a hearing.

23 (c) If the department consents, a licensee that has been the subject of an order under (a)  
24 or (b) of this section may resume providing financing assistance to businesses under the  
25 conditions that the department prescribes.

26 (d) A person to whom an order is issued under (a) or (b) of this section may apply to  
27 the department to modify or rescind the order. The department may not grant the application  
28 unless the department determines that it is in the interest of the public to do so and that it is  
29 reasonable to believe that the person will comply with this chapter.

30 Sec. 10.13.810. TAKING POSSESSION OF LICENSEE. (a) If the department finds  
31 that a factor in AS 10.13.800 is true with respect to a licensee and that it is necessary for the



1 protection of the interests of the licensee or of the public, the department may take immediate  
2 possession of the property and business of the licensee and appoint a conservator for the licensee.

3 (b) The department may appoint as conservator one of the employees of the division of  
4 banking, securities, and corporations of the department or another competent and disinterested  
5 person. The division shall be reimbursed out of the assets of the conservatorship for all money  
6 expended by the division in connection with the conservatorship. Upon the approval of the  
7 department, the expenses of the conservatorship paid for by the division shall be paid out of the  
8 assets of the licensee. Payment of the division expenses shall take priority over other payments  
9 from the assets and shall be fully paid before a final distribution is made.

10 (c) Under the direction of the department, the conservator shall take possession of the  
11 books, records, and assets of the licensee and shall take other action that is necessary to conserve  
12 the assets of the licensee or to ensure payment of obligations of the licensee pending further  
13 disposition of the licensee's business.

14 (d) At an appropriate time, the department may terminate the conservatorship and permit  
15 the licensee to resume the transaction of the licensee's business subject to the terms, conditions,  
16 restrictions, and limitations the department prescribes.

17 Sec. 10.13.820. RECEIVERSHIP. (a) The department may apply to the superior court  
18 for the appointment of a receiver for a licensee, if the department determines that the licensee  
19 should be liquidated because

- 20 (1) the licensee is insolvent;
- 21 (2) the licensee has suspended payment of the licensee's obligations, has made  
22 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's  
23 inability to pay the licensee's debts as the debts become due;

24 (3) the licensee has applied for an adjudication of bankruptcy, reorganization,  
25 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law;

26 (4) a person has applied for the relief described under (3) of this subsection  
27 against a licensee and the licensee has by an affirmative act approved of or consented to the  
28 action or the relief has been granted; or

29 (5) the licensee is in a condition that makes it unsafe or unsound for the licensee  
30 to transact business.

31 (b) If a receiver is appointed under (a) of this section, the receiver shall liquidate the

1 property and business of the licensee.

2 Sec. 10.13.830. CIVIL PENALTY. (a) If after notice and a hearing the department finds  
3 that a person has violated this chapter, the department may order the person to pay to the  
4 department a civil penalty in the amount the department specifies. The civil penalty may not  
5 exceed \$1,000 for each violation, or in the case of a continuing violation, \$1,000 for each day  
6 the violation continues.

7 (b) This section does not apply to an act committed or omitted in good faith in  
8 conformity with an order, regulation, declaratory ruling, or written interpretative opinion of the  
9 department, even if the order, regulation, declaratory ruling, or written interpretative opinion is  
10 later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid.

11 (c) The provisions of (a) of this section are in addition to, and not alternative to, the  
12 other provisions of this chapter that authorize the department to issue orders or to take other  
13 action on account of a violation of this chapter.

14 ARTICLE 8. GENERAL PROVISIONS.

15 Sec. 10.13.850. CONSTRUCTION OF CHAPTER. This chapter shall be liberally  
16 construed to accomplish its purposes.

17 Sec. 10.13.860. APPLICATION OF ADMINISTRATIVE PROCEDURES ACT TO  
18 PROCEEDINGS. A proceeding under AS 10.13.830 is subject to AS 44.62 (Administrative  
19 Procedure Act). Except as otherwise provided in this chapter, other proceedings and actions  
20 under this chapter are exempt from AS 44.62.

21 Sec. 10.13.870. APPEALS. A final order of an administrative proceeding under  
22 AS 10.13.710 - 10.13.760, 10.13.800, 10.13.810, or 10.13.830 may be appealed to the superior  
23 court.

24 Sec. 10.13.880. PROVISIONS OF LICENSEE'S INCORPORATION. Except as  
25 otherwise provided in this section, the provisions of the law under which a licensee is  
26 incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts  
27 with a provision of this chapter, this chapter controls.

28 Sec. 10.13.890. ASSOCIATES. (a) In AS 10.13.300 - 10.13.310 and 10.13.630 -  
29 10.13.660, a person who is an associate within six months before or after a licensee provides  
30 financing assistance shall be considered to be an associate as of the date the licensee provides  
31 the assistance.

1 (b) If a licensee, in order to protect the licensee's interests, designates a person to serve  
2 as a director of, officer of, or in a management capacity of a business to which the licensee  
3 provides financial assistance, the person may not, on that account, be considered to be an  
4 associate under AS 10.13.300 - 10.13.310 or 10.13.630 - 10.13.660. This subsection does not  
5 apply if the person has, directly or indirectly, another financial interest in the business or if the  
6 person, at any time before the licensee provides the financing assistance, served as a director of,  
7 officer of, or in another capacity in the management of the business for a period of 30 days or  
8 more.

9 Sec. 10.13.900. OTHER LICENSES. A corporation that is licensed under this chapter  
10 may apply for and be issued a license under another law of the state, federal government, or of  
11 another state in the United States unless the transaction of business by the corporation as a  
12 licensee under the other license would violate this chapter or would be contrary to the purposes  
13 of this chapter.

14 Sec. 10.13.910. EXEMPTION. A licensee is not subject to the other provisions of this  
15 title.

16 Sec. 10.13.990. DEFINITIONS. In this chapter,

17 (1) "affiliate" means, if used with respect to a nonnatural person, a person who  
18 controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled  
19 by a person who also controls the nonnatural person;

20 (2) "associate" means, if used with respect to a licensee,

21 (A) a controlling person, director, or officer of the licensee;

22 (B) a director, officer, or partner of a person referred to in (A) of this  
23 paragraph;

24 (C) a person who controls, is controlled by, or is under common control  
25 with a person referred to in (A) of this paragraph, directly or indirectly through an  
26 intermediary;

27 (D) a close relative of a person referred to in (A) of this paragraph; in this  
28 subparagraph, "close relative" means a parent, child, sibling, or spouse, or a relative of  
29 the same degree through marriage;

30 (E) a person of which a person referred to in (A) - (D) of this paragraph  
31 is a director or officer;

1 (F) a person in which a person referred to in (A) - (D) of this paragraph,  
2 or a combination of the persons acting in concert, owns or controls, directly or indirectly,  
3 a 20 percent or greater equity interest;

4 (3) "BIDCO" means a corporation that is licensed under this chapter to provide  
5 financial and management assistance to businesses;

6 (4) "business" means a person who transacts or proposes to transact business on  
7 a regular and continual basis;

8 (5) "control" means, if used with respect to a specific person, the power to direct  
9 or cause the direction of, directly or indirectly through an intermediary, the management and  
10 policies of the person, through the ownership of voting interests, by contract other than a  
11 commercial contract for goods or nonmanagement services, or by other means; a natural person  
12 is not considered to control another person solely because the natural person is a director, officer,  
13 or employee of the other person; a person is rebuttably presumed to control a corporation if the  
14 person directly or indirectly owns of record, holds beneficially with power to vote, or holds  
15 proxies with discretionary authority to vote, 20 percent or more of the then outstanding voting  
16 securities issued by a corporation;

17 (6) "controlling person" means, if used with respect to a specific person, a person  
18 who controls the specific person, directly or indirectly through an intermediary;

19 (7) "corporate name" means the name of a corporation in its articles of  
20 incorporation;

21 (8) "department" means the Department of Commerce and Economic  
22 Development;

23 (9) "insolvent" means not paying debts in the ordinary course of business, not  
24 paying debts as they become due, or liabilities exceeding assets;

25 (10) "interests of the licensee" includes the interests of the shareholders of the  
26 licensee;

27 (11) "license" means a license issued under this chapter;

28 (12) "licensee" means a corporation that is licensed under this chapter;

29 (13) "officer" means

30 (A) with respect to a corporation, a person appointed or designated as an  
31 officer of the corporation by or under applicable law or the corporation's articles of

1 incorporation or bylaws, or a person who performs with respect to the corporation the  
2 functions usually performed by an officer of a corporation;

3 (B) with respect to a specific person other than a natural person or a  
4 corporation, a person who performs for the specific person the functions usually  
5 performed by an officer of a corporation for a corporation;

6 (14) "order" means an approval, consent, authorization, exemption, denial,  
7 prohibition, or requirement applicable to a specific case and issued by the department, including  
8 a license condition and an agreement made by a person with the department under this chapter;

9 (15) "person" includes a government and an agency of a government; when used  
10 with respect to acquiring control of or controlling a specific person, "person" includes a  
11 combination of two or more persons acting in concert;

12 (16) "principal shareholder" means a person who owns, directly or indirectly, of  
13 record or beneficially, securities representing 10 percent or more of the outstanding voting  
14 securities of a corporation;

15 (17) "subject person" means

16 (A) a controlling person, subsidiary, or affiliate of a licensee;

17 (B) a director, officer, or employee of a licensee or of a controlling  
18 person, subsidiary, or affiliate of a licensee;

19 (C) another person who participates in the conduct of the business of a  
20 licensee; or

21 (D) if used with respect to a licensee, a company or business of which the  
22 licensee holds control under AS 10.13.260 - 10.13.280.

23 Sec. 10.13.995. SHORT TITLE. This chapter may be cited as the Alaska BIDCO Act.

24 \* Sec. 2. AS 37.17 is amended by adding new sections to read:

25 ARTICLE 2. BIDCO ASSISTANCE PROGRAM.

26 Sec. 37.17.200. PURPOSES OF BIDCO ASSISTANCE PROGRAM. The purposes of  
27 AS 37.17.200 - 37.17.390 include

28 (1) assisting in the formation, capitalization, and operation of BIDCOS that  
29 operate as licensed and regulated private financial institutions, with a highly qualified  
30 management team and a good business plan, and that are designed to operate in a profit-oriented,  
31 market-disciplined manner, with excellent prospects for long-term financial success and viability;

1 (2) promoting economic development by providing a new source of risk capital  
2 and management assistance for businesses, especially small and medium sized businesses, in  
3 geographic areas throughout the state, including businesses in rural areas and distressed areas,  
4 and including minority owned businesses; and

5 (3) using state resources to attract other capital resources.

6 Sec. 37.17.210. BIDCO FUND. The BIDCO fund is established in the Alaska Science  
7 and Technology Foundation. The fund consists of appropriations made to the fund by the  
8 legislature, money or other assets transferred to the fund by the foundation, and repayments of  
9 loans made under AS 37.17.200 - 37.17.390.

10 Sec. 37.17.220. USE OF MONEY IN BIDCO FUND. From the money in the BIDCO  
11 fund, the foundation may make loans or grants, as authorized under AS 37.17.220 - 37.17.390,  
12 to assist in the formation, capitalization, and operation of corporations that are licensed under  
13 AS 10.13.

14 Sec. 37.17.230. BIDCO CAPITALIZATION LOANS. A loan for the initial capitalization  
15 of a BIDCO, except for a closing assistance loan under AS 37.17.340, shall be made under the  
16 terms and conditions that the foundation determines to be appropriate and that are consistent with  
17 AS 37.17.200 - 37.17.390.

18 Sec. 37.17.240. LOAN COMMITMENT CONDITIONS. (a) When issuing a  
19 commitment to make a BIDCO capitalization loan, the foundation shall make the loan closing  
20 contingent on

21 (1) the BIDCO receiving a license under AS 10.13, which may occur  
22 simultaneously with the loan closing;

23 (2) the BIDCO satisfying the capitalization requirements of AS 37.17.250; and

24 (3) other conditions that the foundation may impose.

25 (b) The foundation may not issue a loan commitment under this section unless the  
26 foundation determines that the prospective BIDCO satisfies high quality evaluation standards as  
27 determined by the foundation. The evaluation standards must include the following findings:

28 (1) the loan is likely to substantially promote the purposes of AS 37.17.200 -  
29 37.17.390;

30 (2) the BIDCO's prospective management team is highly qualified to manage the  
31 BIDCO;

1 (3) the BIDCO's business plan is a good business plan that, together with the  
2 management team, promotes confidence in the prospects for the long-term financial success and  
3 viability of the BIDCO; and

4 (4) if the foundation issues a loan commitment to the BIDCO, it is probable that  
5 the BIDCO will be able to satisfy the capitalization requirements of AS 37.17.250.

6 Sec. 37.17.250. INITIAL CAPITALIZATION OF BIDCO. (a) The initial capitalization  
7 of a BIDCO to which the foundation makes a BIDCO capitalization loan must include

8 (1) at least \$500,000 in equity investment in the BIDCO, in addition to any  
9 organization costs paid for or owed by the BIDCO;

10 (2) the BIDCO capitalization loan; and

11 (3) additional capital in an amount required by the foundation and on terms and  
12 conditions acceptable to the foundation; the additional capital may be in the form of debt, grants,  
13 equity investment in addition to the minimum equity investment requirement of \$500,000 under  
14 (1) of this subsection, or a combination of debt, grants, and the equity investment.

15 (b) The minimum equity investment under (a)(1) of this section must be fully received  
16 by the BIDCO before or at closing of the BIDCO capitalization loan. The BIDCO capitalization  
17 loan shall be fully disbursed to the BIDCO at closing. The additional capital shall also be fully  
18 disbursed at closing; however, if the foundation is satisfied that there is a firm commitment for  
19 the additional capital, that the source for the additional capital will deliver on the firm  
20 commitment, and that the documents evidencing the additional capital have been executed on  
21 terms acceptable to the foundation, the additional capital may be disbursed to the BIDCO on a  
22 phased-in basis on terms acceptable to the foundation.

23 Sec. 37.17.260. SUBORDINATION OF BIDCO CAPITALIZATION LOAN. A BIDCO  
24 capitalization loan may be subordinated to the additional capital required under  
25 AS 37.17.250(a)(3).

26 Sec. 37.17.270. BIDCO CAPITALIZATION LOAN PAYMENT AND INTEREST. (a)  
27 A BIDCO capitalization loan must be structured so that the full amount of the principal is due  
28 in a lump sum at the end of the loan term.

29 (b) Interest on a BIDCO capitalization loan accrues during the loan term and is due at  
30 the end of the loan term.

31 Sec. 37.17.280. BIDCO CAPITALIZATION LOAN CREDITS. (a) A BIDCO

1 capitalization loan must include a formula that allows the BIDCO to earn credits to reduce the  
2 interest and principal owed on the loan. The formula shall be based on increasing jobs and sales  
3 in some or all of the businesses financed by the BIDCO and on sustaining the increases. To the  
4 extent the foundation determines appropriate, the foundation may also provide credits in situations  
5 where the foundation is satisfied that financing assistance provided by the BIDCO prevented the  
6 loss of jobs.

7 (b) The foundation shall establish procedures for the certification of credits earned by a  
8 BIDCO under this section, including the circumstances under which credits may be denied.

9 Sec. 37.17.290. IMPLEMENTATION OF BIDCO LOAN CAPITALIZATION  
10 PROGRAM. (a) The foundation shall implement the program for making BIDCO capitalization  
11 loans under AS 37.17.200 - 37.17.390 in a manner designed to encourage financing assistance  
12 by BIDCOS to businesses throughout the state. Through the use of the formulas designed under  
13 AS 37.17.280, the foundation shall provide special incentives to encourage the financing of  
14 businesses located in distressed areas, including distressed rural areas, and the financing of  
15 minority owned businesses. In this subsection, "minority owned business" means a business that  
16 is owned, controlled, and operated by an individual who is a member of a minority and in which  
17 more than 50 percent of the net profit or loss attributable to the business accrues to a member  
18 of a minority; in this paragraph, "member of a minority" includes a person who is black,  
19 Hispanic, or Alaska Native.

20 (b) When determining under (a) of this section whether an area is distressed or how  
21 distressed an area is, the foundation may use, individually or in combination, factors that include  
22 unemployment, poverty, lack of access to the state highway system, lack of access to a marine  
23 transportation system, and other factors the foundation determines to be appropriate.

24 Sec. 37.17.300. TERMS OF BIDCO CAPITALIZATION LOANS. When determining  
25 the amount or range of amount for a BIDCO capitalization loan, the term to maturity of the loan,  
26 the interest rate for the loan, the additional capital requirements for the loan, and the formula for  
27 earning credits under the loan, the foundation shall consider the following objectives:

28 (1) that the BIDCO will have adequate capitalization to support a highly qualified  
29 management team, to implement a business plan that, when combined with the management team,  
30 will promote confidence in the prospects of the BIDCO for long-term financial success and  
31 viability, and to otherwise promote the purposes of AS 37.17.200 - 37.17.390;

1 (2) that the additional capital requirement is in an amount that encourages the  
2 BIDCO to raise as much capital as feasible from sources other than the BIDCO capitalization  
3 loan, without unduly hindering the ability of the BIDCO to become operational;

4 (3) that the formula for earning credits under AS 37.17.280, combined with the  
5 other terms and conditions of the loan, will be designed so that with a reasonable performance  
6 by the BIDCO, the BIDCO will be able to earn sufficient credits to reduce the amount of  
7 principal and interest owed on the loan to zero by or before the end of the loan term; and

8 (4) that the formula for earning credits under AS 37.17.280, combined with the  
9 other terms and conditions of the loan, is sufficiently challenging that the special incentives  
10 provided by the credits allowed under AS 37.17.280 remain in effect for the longest feasible time  
11 during the loan term as is consistent with meeting the other objectives identified in this section.

12 Sec. 37.17.310. ACCESS TO MEETINGS AND INFORMATION. While a BIDCO  
13 capitalization loan is outstanding and the obligations of the BIDCO to the foundation remain  
14 undischarged, the BIDCO shall allow the foundation to have a representative present at all  
15 meetings of the BIDCO's board of directors and of the BIDCO's shareholders, to receive all  
16 notices and information sent to the board of directors or the shareholders, to have the same access  
17 to information about the BIDCO as the directors have and as the shareholders have, and to  
18 receive additional reports or information from the BIDCO that the foundation reasonably requests.

19 Sec. 37.17.320. BIDCO OPERATION LIMITATION. While a BIDCO capitalization  
20 loan is outstanding and the obligations of the BIDCO to the foundation remain undischarged, the  
21 BIDCO may not provide financing assistance to businesses located outside the state. If a  
22 business assisted by the BIDCO has multi-state or multi-national operations, the location of the  
23 business is where the largest economic benefit of the financing assistance transaction made by  
24 the BIDCO to the business is likely to occur.

25 Sec. 37.17.330. SURRENDER OF BIDCO LICENSE. While a BIDCO capitalization  
26 loan is outstanding and the obligations of the BIDCO to the foundation are not discharged, the  
27 BIDCO may not surrender its license under AS 10.13 without the written consent of the  
28 foundation.

29 Sec. 37.17.340. CLOSING ASSISTANCE. If determined by the foundation to be  
30 advisable, the foundation may use revenue in the BIDCO fund to provide assistance to a person  
31 to complete the tasks necessary for the person to achieve a closing on a BIDCO capitalization

1 loan. The foundation may provide the assistance on the terms and conditions that the foundation  
2 determines appropriate.

3 Sec. 37.17.350. CONFIDENTIALITY. In order to promote the purposes of  
4 AS 37.17.200 - 37.17.390, the foundation may establish policies under which it will keep  
5 confidential certain types of information submitted to the foundation by an applicant for a  
6 BIDCO loan or other assistance under AS 37.17.200 - 37.17.390 and by a BIDCO that has  
7 received a BIDCO loan or other assistance under AS 37.17.200 - 37.17.390. The information  
8 that is determined to be confidential under this section is not a public record under  
9 AS 09.25.110 - 09.25.220.

10 Sec. 37.17.360. SUBSEQUENT LOANS. If the foundation determines that a BIDCO,  
11 after receiving a BIDCO capitalization loan, has performed well financially and in promoting the  
12 purposes of AS 37.17.200 - 37.17.390, and if more than four years have elapsed since the loan  
13 was made, the foundation may make an additional loan to the BIDCO, on the terms and  
14 conditions that the foundation considers appropriate.

15 Sec. 37.17.390. DEFINITIONS. In AS 37.17.200 - 37.17.390,

16 (1) "additional capital" means the additional capital required under  
17 AS 37.17.250(a)(3);

18 (2) "BIDCO" means a corporation licensed under AS 10.13;

19 (3) "BIDCO capitalization loan" means a BIDCO loan made for the initial  
20 capitalization of a BIDCO, but does not include a BIDCO loan made under AS 37.17.340;

21 (4) "BIDCO loan" means a loan made under AS 37.17.200 - 37.17.390;

22 (5) "foundation" means the Alaska Science and Technology Foundation  
23 established under AS 37.17.010.

24 \* Sec. 3. AS 06.05.270(a) is amended to read:

25 (a) In addition to loans and acquisitions expressly authorized by this chapter, a state bank  
26 may deal in, underwrite, and invest in for its own account

27 (1) direct or guaranteed obligations of the United States, either directly or in the  
28 form of securities of, or other interests in, an open-end management type investment company  
29 or investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of  
30 1940), if

31 (A) the portfolio of the investment company or investment trust is limited

1 to obligations of the United States government and repurchase agreements fully  
2 collateralized by the obligations; and

3 (B) the investment company or investment trust takes delivery of the  
4 collateral directly or through an authorized custodian;

5 (2) general obligations of the State of Alaska and its political subdivisions;

6 (3) general obligations of a state of the United States or its political subdivisions;

7 (4) revenue obligations of the State of Alaska or its political subdivisions subject  
8 to the limitation of (b) of this section;

9 (5) revenue obligations of a state of the United States or its political subdivisions  
10 subject to the limitation of (b) of this section;

11 (6) obligations of instrumentalities of the United States government including, but  
12 not limited to Federal Intermediate Credit Banks, Federal Land Banks, the Federal National  
13 Mortgage Association, and Banks for Cooperatives;

14 (7) commercial paper of prime or equivalent quality as rated by a recognized  
15 national rating service subject to the limitation of (b) of this section;

16 (8) secured corporate obligations rated within the three highest grades of a  
17 national rating service subject to the limitation of (b) of this section;

18 (9) obligations of the International Bank for Reconstruction and Development, the  
19 Inter-American Development Bank, or the African Development Bank, subject to the limitation  
20 of (b) of this section;

21 (10) stock in the Federal National Mortgage Association, a Federal Reserve Bank,  
22 or a Federal Home Loan Bank;

23 (11) in the stocks and bonds of a BIDCO licensed under AS 10.13; the  
24 investment may be for the initial capitalization of a corporation licensed under AS 10.13,  
25 if the finalization of the investment occurs contemporaneously with the licensing.

26 \* Sec. 4. AS 06.05.270(b) is amended to read:

27 (b) A state bank may not underwrite or invest for its own account an amount exceeding  
28 15 percent of its combined capital, surplus and undivided profits in any one issue of securities  
29 authorized in (a)(4) and (5) of this section or with any one obligor of the securities authorized  
30 in (a)(7), (8), [AND] (9), and (11) of this section.

31 \* Sec. 5. AS 06.15.240 is amended to read:

1           Sec. 06.15.240. INVESTMENTS AUTHORIZED. Subject to the provisions of this  
2 chapter and regulations under this chapter, a mutual bank may invest in

3           (1) obligations of the United States and those for which the faith of the United  
4 States is pledged to provide for the payment of the interest and principal, obligations for which  
5 annual contributions to be paid under [PURSUANT TO] contract by the United States  
6 government or any of its instrumentalities in accordance with an Act of Congress entitled the  
7 "Housing Act of 1949," are pledged as security for the payment of the interest and principal, and  
8 obligations of any agency of the United States;

9           (2) obligations of any state of the United States and those for which the faith of  
10 any state of the United States is pledged to provide for the payment of the interest and principal;

11           (3) obligations of a city, village, town, county, department, agency, district,  
12 authority, commission or other public body of any state of the United States, subject to the  
13 exercise of the same degree of care and prudence that persons prompted by self-interest generally  
14 exercise in their own affairs;

15           (4) any property improvement note issued under the provisions of Title I of the  
16 National Housing Act and any other real property improvement note in a principal amount not  
17 in excess of \$15,000, not including interest;

18           (5) obligations of the Dominion of Canada or provinces of the Dominion of  
19 Canada payable in United States funds;

20           (6) in the stocks and bonds of a BIDCO licensed under AS 10.13: the  
21 investment may be for the initial capitalization of a corporation licensed under AS 10.13,  
22 if the finalization of the investment occurs contemporaneously with the licensing.

23 \* Sec. 6. AS 06.25.170 is amended to read:

24           Sec. 06.25.170. PURCHASE AND SALE OF SECURITIES. A trust company may  
25 purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities.  
26 When money or security for money is borrowed or received on deposit, or for investment, the  
27 bonds or obligations of the trust company may be given, but it may not issue bills to circulate  
28 as money. In this section, "bonds" and "stocks" include bonds and stocks of a BIDCO  
29 licensed under AS 10.13, including stocks for the initial capitalization of a corporation  
30 licensed under AS 10.13, if the trust company stock purchase occurs contemporaneously  
31 with the licensing.

1 \* Sec. 7. AS 06.30.610 is amended to read:

2 Sec. 06.30.610. INVESTMENTS IN SECURITIES. An association may invest in the  
3 following securities:

4 (1) obligations of, or guaranteed as to principal and interest by, the United States  
5 or this state without limitation;

6 (2) stock of a Federal Home Loan Bank of which it is eligible to be a member  
7 and in obligations or consolidated obligations of any Federal Home Loan Bank;

8 (3) stock or obligations of the Federal Savings and Loan Insurance Corporation;

9 (4) stock or obligations of a national mortgage association or its successor;

10 (5) demand, time, or savings deposits with a bank or trust company whose  
11 deposits are insured by the Federal Deposit Insurance Corporation;

12 (6) stock or obligations of any corporation or agency of the United States or this  
13 state, or in deposits of the corporation or agency [THEREWITH] to the extent that the  
14 corporation or agency assists in furthering or facilitating the association's purposes or powers;

15 (7) savings accounts of an association operating under this chapter and of a  
16 federal savings and loan association;

17 (8) evidence of indebtedness that is a general obligation of a city, town, village,  
18 school district, or other municipal or political subdivision of this state;

19 (9) other stocks, securities, or obligations that the commissioner approves and  
20 places on a published list; an association investing in securities listed by the commissioner is not  
21 required to dispose of the securities if at a later time the commissioner removes the securities  
22 from the list;

23 (10) the stocks and bonds of a BIDCO licensed under AS 10.13; the  
24 investment may be for the initial capitalization of a corporation licensed under AS 10.13,  
25 if the finalization of the investment occurs contemporaneously with the licensing.

26 \* Sec. 8. AS 06.45.060(7) is amended to read:

27 (7) invest its funds

28 (A) in loans exclusively to members;

29 (B) in obligations of the United States or securities fully guaranteed as to  
30 principal and interest by the United States;

31 (C) in loans to other credit unions in the total amount not exceeding 25

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percent of its paid-in and unimpaired capital and surplus in accordance with regulations adopted by the commissioner;

(D) in shares or accounts of savings and loan associations or mutual savings banks that are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation;

(E) in obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or a corporation designated in 31 U.S.C. 9101 as a wholly owned federal government corporation; in obligations, participations, or other instruments of or issued by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities that [WHICH] are or have been sold by the Federal Home Loan Mortgage Corporation under 12 U.S.C. 1454 or 12 U.S.C. 1455 (Federal Home Loan Mortgage Corporation Act) [SECS. 305 OR 306 OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION ACT]; or in obligations or other instruments or securities of the Student Loan Marketing Association;

(F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections from obligations, that [WHICH] have been subjected by one or more federal agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States or its head has been named to act as trustee;

(G) in shares or deposits of a central credit union in which such investments are authorized by the board of directors of the credit union making the investment;

(H) in shares, share certificates, or share deposits of federally insured credit unions;

(I) in the shares, stocks, or obligations of another organization providing services that are associated with the routine operations of credit unions, up to one percent of the total paid-in and unimpaired capital and surplus of the credit union with the approval of the commissioner; [AND]

(J) in the capital stock of the National Credit Union Central Liquidity

1 Facility; and  
2 (K) in the stocks and bonds of a BIDCO licensed under AS 10.13; the  
3 investment may be for the initial capitalization of a corporation licensed under  
4 AS 10.13, if the finalization of the investment occurs contemporaneously with the  
5 licensing;

6 \* Sec. 9. AS 37.17.010(b) is amended to read:

7 (b) The purposes [PURPOSE] of the foundation are [IS] to

8 (1) promote and enhance through basic and applied research: economic  
9 development and technological innovation in Alaska; public health; telecommunications; and  
10 sustained growth and development of Alaskan scientific and engineering capabilities;

11 (2) implement the BIDCO assistance program under AS 37.17.200 - 37.17.390.

12 \* Sec. 10. This Act takes effect January 1, 1993.